**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1708/1999

RATAN SINGH & ORS.
v
CHHITARLAL

Date of Judgment: 25th JANUARY,2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. R.K. Agarwal, for the appellants.
Mr. Suresh Sahni with
Mr. R.M. Sharma for the respondents.

By Court:

The appellant-plaintiffs have challenged the order dated 29.7.99 passed by the Addl. District Judge No. 3, Kota whereby the learned Judge has set aside the judgment and decree dated 27.10.86 passed by the learned trial court and has remanded the case back to the learned trial court for deciding the issue of partial eviction.

The brief facts of the case are that plaintiff Ratan Singh had let out a shop to the respondent Chhitar Lal. However, subsequently Ratan Singh's grand-son Dhirendra Singh wanted to open a shop for soft drinks. Therefore, the plaintiff had a bonafide necessity for wanting the shop to be vacated. Since Chhitar Lal was an agriculturist, who was not using the shop for any personal or business purposes, therefore, he hardly needed the shop. The

plaintiff also contended that the respondent had damaged the premises. According to him the premises were being used for manufacturing 'Gajak & Revadis'. For this purpose sugarcane and ice is used. He further alleged that the respondent created nuisense by placing chairs, “Thela”, “Bhatti”. Whenever the plaintiff would request the respondent to remove such obstacles, the respondent would abuse him in front of the people. The plaintiff further claimed that he had sent a notice to the respondent on 26.5.83 for vacating the shop. In January, 1984, the respondent had promised to vacate the shop within 4-5 months. However, he failed to keep his promise. Thus, the plaintiff instituted a suit for eviction on the ground of bonafide necessity, damage to the premises and nuisense. The respondent filed his written statement. On the basis of the pleadings, the learned trial court framed five issues. In order to prove his case, the plaintiff examined three witnesses. In order to substantiate his case, the defendant examined himself as a witness. After hearing both the parties and after going through the oral and documentary evidence, vide order dated 27.10.86, the learned trial court decreed the suit in favour of the plaintiff and directed the respondent to vacate the shop within a period of two months. Since the respondent was aggrieved by the said order, he filed an appeal before the Addl. District Judge No. 3, Kota. Vide order dated 29.7.99, the learned Judge set aside the order dated 27.10.86 and directed

the learned Judge to examine the issue whether partial eviction would give sufficient space for the landlord to establish his business without causing any nuisense to the tenant or not. Hence this appeal before this court.

Mr. R.K. Agrawal, learned counsel for the appellant, has vehemently argued that the shop is not a large one, therefore, it cannot be divided in such a manner as to permit both the landlord and the tenant to carry on the business. Moreover, according to him, the appellate court has sufficient power under Order 41 Rule 23 to 29 Civil Procedure Code (henceforth to be referred to be as 'the Code', for short), to re-frame the issues and to take additional evidence and to decide the case at the appellate stage. Lastly, the landlord has been running from pillar to post since 1983 i.e. over a period of twenty-four years hoping to regain the shop for his personal use.

On the other hand, Mr. Suresh Sahani, learned counsel for the respondent, has strenuously argued that Section 14(2) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 creates a mandatory requirement for the Court to consider the issue of partial eviction. The said issue has neither been raised nor answered by the trial Judge. Therefore, the appellate Court was justified in remanding the case back to the trial court.

We have heard both the learned counsels and have

perused the impugned order and the judgment dated 27.10.86.

Section 107 and order 41 Rule 23 to 26-A of the Code deal with the powers of the appellate Court. While Section 107 grants the same power to the appellate Court as has been conferred on the courts of original jurisdiction, Section 107(1)(d) grants the power of taking additional evidence on the appellate Court. Order 41 Rule 23 to 26-A deal with the circumstances when the appellate Court is justified in remanding a case back to the trial court. Order 41 Rule 27 permits the appellate Court to require production of any document or examination of a witness to enable it to pronounce a judgment or for any other substantial cause. Of course, the Court must record its reason for admitting the said evidence.

In the case of Niranjan Lal Vs. U.I.T., Alwar & Ors. (SBCMA No. 1253/1998 decided on 21.8.2006) this Court had an occasion to elaborately discuss the power under Section 107 and Order 41 Rule 23 to 29 of the Code. This Court observed as under:-

> **The purpose behind the Rules is not to initiate de novo trial. The purpose is also not to prolong the dispute between the parties. Since the Judiciary must endeavour to decide the dispute as soon as possible, the appellate court is expected to decide the case at the appellate stage itself. Therefore, the tendency to remand the case in toto after setting aside the judgment of the trial court and the tendency to direct a denovo trial is against the tenor of law. The appellate court is expected to exercise its power within the confines to Rules 23 to 26-A of the Code. Ample powers have been given to the appellate court under Rules, 27, 28 and 29 of the Code to take additional**

evidence and to decide the issues reframed by it. Since the Trial Courts are the most overburdened Courts in the judicial hierarchy, the appellate court should refrain from remanding the case in toto in a routine manner. What can be done at the appellate stage, need not be remanded back to the trial courts. After all, the buck has to stop somewhere.

The poor litigant cannot be treated as a shuttlecock and forced to run from pillar to post, from court to court. The litigant expects the judiciary to decide its case at the earliest. The litigant neither has the financial means, nor the energy to go on a roller-coaster ride of litigations. The judiciary has to be sensitive to the financial condition and to the expectation of the litigant. To prolong a dispute endlessly is not only a disservice to the litigant, but it is an injustice to him. Therefore, this trend of remanding the case back to the trial court in a mechanical and routine manner has to stop. The learned District Judges, who are experienced and knowledgeable, are expected to do their duty by the litigant.

In the case of Bechan Pandy and Others v Dulhin Janki Devi and Others, (AIR 1976 SC 866), the Hon'ble Supreme Court had held as under:

To remand a suit to the trial court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long drawn litigation by another round of legal battle in the trial court and thereafter in appeal. It is time, that the final curtain is drawn and the long meandering course of litigation between the parties is put an end to. The Courts should be loath to entertain a plea, which would have the effect of condemning succeeding generation of families to spend major part of their lives in the protracted litigation.

Similarly, in the case of P. Purushottam Reddy and Another v Pratap

Steels Ltd. ((2002) 2 SCC 686), the Apex Court cautioned and said, "An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided". Although in this case the Apex Court was dealing with the power of the High Court to remand a case back to the trial court after the Amendment of 1976 in the Code, the caution quoted above equally applies to the District Court.

In the case of Prahlad Rai Dhand Vs. Smt. Savitri Devi (2003(3) WLC (Raj.) 575), this court has held as under:

> ***Where the evidence on record is sufficient to decide the matter and controversy in between the parties, the appellate court should not remit the case to the trial court. It should itself decide the matter. If it is necessary to frame additional issue, the appellate court can very well frame issues which appear to it necessary and then decide the matter on the evidence on record if there is sufficient evidence. But even where it comes to the conclusion that some important issue has been left out or omitted by the trial court and it is essential to frame such an issue and the evidence on, such an issue has not been led by the parties or is insufficient, then it can very well frame additional issue and remit the additional issue/issues for taking evidence on the additional issue/issues with the direction to send back evidence along with findings on such issue but it does not empower the appellate court to set aside the entire judgment and decree passed by the trial court.***

In the present case, it was not necessary for the learned Judge to remand the case on the issue of partial eviction. The learned Judge could have taken additional evidence and could have decided the issue itself. In the case of Rajkumar and Anr. Vs. Maharaja (1990 (2) RLR 271) this Court had clearly held that where it is apparent from the evidence that partial eviction is not possible, the non giving of a finding by the court below would not effect the decision. According to the learned counsel for the appellant the shop is small in size. Therefore, it is not possible to divide the shop into two parts, one part to be kept by the landlord for his personal and bonafide necessity and the other part to be kept by the tenant for running his business. Since the shop is small one it is apparent that the partial eviction would not fulfill the personal bonafide need of the landlord. Therefore, there was no occasion for the learned Judge to remand the case back.

In the result, this appeal is allowed and the order dated 29.7.99 is quashed and set aside. The appellate Court is directed to decide the appeal within a period of two months from the date of the receipt of the certified copy of this order.

(R.S. CHAUHAN) J.

MRG.